Supreme Court, U.S.
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No. 01-434

In the Supreme Court of the United States

FRANK TAYLOR, JR.
Respondent

Versus

TRANSOCEAN TERMINAL OPERATORS, INC.
Petitioner

ON PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI ON BEHALF OF TRANSOCEAN TERMINAL OPERATORS, INC. Petitioner

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QUESTION PRESENTED

1.

Did the Louisiana Fourth Circuit Court of Appeal erroneously conclude that there is an intentional tort exception to the employer's tort immunity under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et seq.*, thereby allowing the plaintiff, Frank Taylor, to pursue a cause of action in tort against his longshore employer, Transocean Terminal Operators, Inc., and did the Louisiana Supreme Court err in refusing to consider and reverse that ruling?

CORPORATE DISCLOSURE STATEMENT

Petitioner, Transocean Terminal Operators, Inc., is wholly owned by Gulf Services Inc., which is not a publicly traded entity.

TABLE OF CONTENTS

QUESTION PRESENTED i

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF AUTHORITIES v
- Cases v
- Statutes - Federal vii
- Statutes - State vii
- Court Rules vii
- Other vii

CITATIONS TO OPINIONS AND ORDERS OF LOWER COURTS 1

STATEMENT REGARDING JURISDICTION 1

STATUTES AT ISSUE 1

STATEMENT OF THE CASE 2

ARGUMENT 5
- Background 5
- This Court Should Preserve the Integrity of LHWCA 9
- This Court Has Jurisdiction To Consider the Judgment Below 9
- TTO Enjoys Tort Immunity under the Longshore Act 15
- LHWCA Does Not Provide For Intentional Tort Exception to Employer's Tort Immunity 17

No Authority for Abrogating
Tort Immunity Under the Longshore Act 19
Proposed Intentional Tort Exception is Contrary
to Express Provisions of the Longshore Act.....25
Remedies Under Longshore Act Encompass
Injuries Resulting From Intentional Acts
by Co-Employees.....26

CONCLUSION 29

APPENDICES:

Appendix A: Denial by Louisiana Supreme
Court of Transocean Terminal Operators,
Inc.'s Writ of Certiorari and/or Review A-1

Appendix B: Decision and Order of Court
of Appeal, Fourth Circuit, State of Louisiana A-2

Appendix C: Judgment of Civil District
Court for the Parish of Orleans, State of Louisiana....A-11

TABLE OF AUTHORITIES

Cases

Austin v. Johns-Manville Sales Corp., 508 F. Supp. 313 (D. Me. 1981) 22

Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 95 S. Ct. 1029, 43 L.Ed.2d 328 (1975).....10,11,12,13

Gauthe v. Asbestos Corp. Ltd., 708 So. 2d 761 (La. App. 5th Cir. 1998), *writ denied*, 749 So. 2d 666 (La.1999) 24

Hall v. Equitable Shipyard, Inc., 670 So. 2d 543 (La. App. 4th Cir. 1996).....17

Hetzel v. Bethlehm Steel Corp., 50 F. 3d 360 (5th Cir. 1995) 26

Houston v. Bechtel Assoc. Professional Corp., 522 F. Supp. 1094 (D.D.C. 1981) 20,21

Howlett v. Birkdale Shipping Co., S.A., 512 U.S. 92, 114 S. Ct. 2057, 2062 (1994) 17

Jefferson v. Alabama, 522 U.S. 75, 118 S.Ct. 481, 139 L.Ed.2d 433 (1997) 10

LeSassier v. Chevron USA, Inc., 776 F. 2d 506 (5th Cir. 1985) 16

Levene v. Pintail Enter., Inc., 943 F. 2d 528 (5th Cir. 1991) 25

Malbrough v. Halliburton Logging Services, Inc., 710 So. 2d 1149 (La. App. 1st Cir.); *writ denied*, 720 So. 2d 1217 (La. 1998) 22,23,24

Mercantile National Bank v. Langdeau, 371 U.S. 555, 83 S.Ct. 520, 9 L.Ed.2d, 523 (1963) 13,14

Penker Const. Co. v. Cardillo, 118 F. 2d 14 (D.C. Cir. 1941) 27,28

Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 65 S.Ct. 1475, 89 L.Ed. 2092 (1945).....11

Robin v. Sun Oil Co., 548 F. 2d 554 (5th Cir. 1977) 17

Sharp v. Elkins, 616 F. Supp. 1561 (W.D. La. 1985) 17,24,25,26,27

Southern Pac. Co. v. Sheppard, 112 F. 2d 147 (5thCir. 1940).....28

Taylor v. Transocean Terminal Operators, Inc., 2000-0604 (La. App. 4 Cir. 3/14/01), 785 So. 2d 860 (La. App. 4thCir.), *writ denied*, 2001-1057 (La. 6/15/01),__So. 2d__, 2001 WL 708852 1,4,18,25,26

Texas Employers' Ins. Assoc. v. Jackson, 820 F. 2d 1406 (5th Cir. 1987) 16

Thomas v. Newton Intern. Enterprises, 42 F. 3d 1266 (9th Cir. 1994) 17

Washington Metropolitan Area Transit Authority v. Johnson, 467 U.S. 925, 104 S. Ct. 2827 (1984).....6

Webb v. Shell Offshore, Inc., 557 So. 2d 276 (La. App. 4th Cir. 1990) 17

Statutes - Federal

28 U.S.C. § 1257 .....1,9,10, 14

33 U.S.C. 904(b) 6

33 U.S.C. § 901, *et seq*.....i,3,5

33 U.S.C. § 902 (3) 15,23,27

33 U.S.C. § 903 15,16

33 U.S.C. § 905(a).....1,6,16,23,25

33 U.S.C. § 905(b).....16

33 U.S.C. § 933(i).....2,6,17,25

Statutes- State

La. Rev.Stat. § 23:1032 18

Court Rules

Rule 10(c) of the Rules of the Supreme Court of the United States.....9

Other

Black's Law Dictionary (7th Ed.).....21

Larson, Workmen's Compensation Law 20,21

CITATIONS TO OPINIONS AND ORDERS OF LOWER COURTS

Taylor v. Transocean Terminal Operators, Inc., 2000-0604 (La. App. 4 Cir. 3/14/01), 785 So. 2d 860 (La. App. 4th Cir.), *writ denied*, 2001-1057 (La. 6/15/01),__So. 2d __, (La. 2001) 2001 WL 708852.

STATEMENT REGARDING JURISDICTION

Transocean Terminal Operators, Inc. ("TTO") applies for a Writ of Certiorari to review and overrule the judgment of the Louisiana Fourth Circuit Court of Appeal rendered on March 14,2001. TTO appealed that ruling to the Louisiana Supreme Court, which denied TTO's request for a writ of certiorari and/or review on June 15, 2001. This application for a Writ of Certiorari pursuant to this Court's jurisdiction under 28 U.S.C. § 1257.

STATUTES AT ISSUE

33 U.S.C. § 905(a)

The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results

from the injury, may elect to claim compensation under the chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee. For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 904 of this title.

33 U.S.C. § 933(i)

The right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence or wrong of any other person or persons in the same employ: Provided, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

STATEMENT OF THE CASE

In this case, a Louisiana state appellate court has undertaken to enact federal law, ignoring the clear intent of Congress, and departing from the long-recognized application of a federal statute. Transocean Terminal Operators, Inc. (hereinafter "TTO") was the longshore employer of Frank Taylor, Jr. (hereinafter "Taylor"), the plaintiff in the proceedings below. On April 13, 1999, Taylor filed a Petition for Damages in the Civil District Court for the

Parish of Orleans, State of Louisiana, wherein he asserted a cause of action **in tort** against TTO as a result of being stabbed by a co-worker on March 15, 1999. Taylor sought tort damages from TTO as a result of the stabbing, in addition to the compensation benefits he has already received under the applicable workers' compensation law.

TTO responded with a Peremptory Exception of No Cause of Action, filed on the basis that the governing law, namely the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et seq.* (hereinafter the "Longshore Act" or "LHWCA"), bars Taylor's tort claim against TTO, and that there is no statutory or judicial exception to TTO's tort immunity. The district court, the Honorable Gerald P. Fedoroff presiding, properly sustained TTO's Exception. A Judgment was entered on August 19, 1999, dismissing Taylor's tort suit with prejudice.(A-11)

Taylor appealed the district court's ruling to the Louisiana Fourth Circuit Court of Appeal, arguing that (1) an exception to the employer's tort immunity under the Longshore Act should apply in the case of an intentional tort by a co-employee and (2) TTO should be held vicariously liable in tort for the intentional act of that co-employee. On March 14, 2001, a three judge panel of the Louisiana Fourth Circuit Court of Appeal vacated the district court's judgment granting TTO's Exception of No Cause of Action and remanded the case for further proceedings.(A-2) The holding by the Fourth Circuit was not founded on any legal precedent, and its recognition that an intentional tort exception can be judicially carved out of the Longshore Act was based only on **dicta** from a handful of cases from various non-binding state and federal opinions.

TTO timely filed an application for writ of certiorari and review to the Louisiana Supreme Court, seeking a reversal of the Louisiana Fourth Circuit's decision, which would in effect reinstate the judgment of the district court, dismissing this action entirely. In a five to two vote, the Louisiana Supreme Court denied TTO's writ application on June 15, 2001.(A-1) The issue of whether there exists an intentional tort exception to a longshore employer's tort immunity in the case of an alleged intentional tort by one longshoreman against another was, therefore, never addressed by the Louisiana's Supreme Court.

Given the history of this case, the Louisiana intermediate appellate court's decision in *Taylor v. Transocean Terminal Operators, Inc.*, 785 So. 2d 860 (La. App. 4th Cir. 2001) is the only reported opinion of which TTO is aware that holds that an intentional tort exception can be applied in cases arising under the Longshore Act to allow a longshore employee to sue his employer for tort damages. Such a departure from the express protective provisions of the Longshore Act has never before been recognized.

Unlike certain state workers' compensation statutes, **the LHWCA does not include an intentional tort exception to the employer's tort immunity.** To the contrary, the Longshore Act contains express and unequivocal provisions recognizing that an employee's **exclusive** remedy against a longshore employer is the recovery of benefits under the Act and that the **sole** liability of the longshore employer to its injured or ill employees is for compensation and medical benefits. The Longshore Act carefully balances the remedies and protections afforded to employees and employers alike.

However, this balance will be perilously disrupted if the holding of the Louisiana Fourth Circuit Court of Appeal is allowed to stand.

TTO now seeks review by this Court in order that the express immunity provisions of the Longshore Act can be restored. Unless corrected by this Court, the ruling by the Louisiana Fourth Circuit Court of Appeal will seriously undermine the Longshore Act's exclusivity provisions, as prescribed by Congress, and will cause material injustice to TTO and countless other longshore employers by judicially expanding the remedies to longshore workers, which were neither intended nor authorized by Congress.

ARGUMENT

Background:

This litigation arises out of the stabbing of Taylor by a fellow employee on March 15, 1999 when arriving at a work site to begin work with TTO. It is undisputed that Taylor was a longshoreman and that TTO was his longshore employer when Taylor was assaulted. It is further undisputed that the Longshore Act, 33 U.S.C. § 901, *et seq,* governs the rights and obligations of both Taylor and TTO.

The Longshore Act does not permit an employee to recover, or even assert a claim for, tort damages against his employer. The employee's remedy is the recovery of medical and compensation benefits, as provided for under the specific provisions of the LHWCA. The employer has to pay these benefits irrespective of fault, and in exchange the

employer enjoys complete tort immunity. 33 .U.S.C. 904(b); *Washington Metropolitan Area Transit Authority v. Johnson,* 467 U.S. 925, 931,104 S. Ct. 2827, 2831 (1984).

The Longshore Act specifically provides that **the liability of an employer shall be exclusive and in place of all other liability of such employer to the employee.** 33 U.S.C. § 905(a)*(emphasis supplied).* The Longshore Act also contains the following express provision regarding the limitations on an employee's remedies as against his employer:

> The right to compensation or benefits under this Chapter **shall be the exclusive remedy to an employee when he is injured ... by the negligence or wrong of any other person or personsin the same employ:** Provided, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

33 U.S.C. § 933(i)*(emphasis supplied).*

In an attempt to circumvent these remedial restrictions mandated by Congress, Taylor commenced this litigation by filing a Petition for Damages in the Civil District Court for the Parish of Orleans, State of Louisiana, wherein he alleged a cause of action in tort against his employer, TTO.[1] Taylor claims he should be allowed to pursue a tort claim against his longshore employer under a proposed "intentional tort" exception to the Longshore Act's exclusivity provisions. TTO filed an Exception of No Cause of

[1] In separate proceedings, Taylor has filed a claim for and received statutory benefits under the Longshore Act.

Action, given that neither the Longshore Act nor the jurisprudence interpreting it provides authority for such an exception. The district court sustained TTO's Exception and dismissed Taylor's suit, with prejudice. Judgment was rendered August 19, 1999.(A-11)

Thereafter, Taylor appealed to the Louisiana Fourth Circuit Court of Appeal. The Fourth Circuit issued its opinion on March 14, 2001, vacating the district court's granting of TTO's Exception of No Cause of Action and remanding the case for further proceedings.(A-2)

The Louisiana Fourth Circuit Court of Appeal, entirely ignoring the plain language enacted by Congress, erroneously concluded that courts have judicially carved out an exception to the Longshore Act's exclusive remedy provisions. In support of this proposition, the Fourth Circuit relied on pure *dicta* contained in a handful of cases from a few federal district and state appellate courts. However, the court below cited no authority which expressly recognizes an intentional tort exception to the Longshore Act. The reason for this is quite simple: No such exception exists under the Longshore Act, and no court has ever held an employer liable in tort damages to its employee under such a theory of liability.

Moreover, the exception discussed in the cases relied upon by the court below relates to intentional torts committed by *an employer,* generally in the context of employment conditions or surroundings in which the employer requires its employees to work. No court (until the Louisiana Fourth Circuit rendered its decision below) even hinted

at the possibility of holding a longshore employer liable for an intentional criminal act of violence by one worker against his fellow employee. Such an act could never reasonably be considered an intentional tort by *the employer.* Consequently, the specious intentional tort "exception" adopted by the Louisiana Fourth Circuit would be inapplicable to the facts of this case. Taylor's allegations do not relate to an intentional tort by TTO, but rather stem from an alleged intentional criminal act committed against Taylor by his co-worker.

Taylor has argued that vicarious liability principles should be stretched to impute his co-employee's tort liability for an intentional tort to his employer. There exists no legal basis for this novel proposition. The Fourth Circuit made no ruling on that issue, notwithstanding the arguments set forth by Taylor and TTO in their briefs and at oral argument in the proceedings below. However, this Court can and should address this issue and reach the inevitable conclusion that Taylor has no cause of action in tort against TTO under the facts and circumstances alleged in his Petition and the applicable law.

Given the ramifications of the ruling of the Louisiana intermediate appellate court, this matter must be resolved by this Court. If allowed to stand, the Louisiana Fourth Circuit Court of Appeal's ruling will have long term adverse effects on TTO and other longshore employers and will open the door to an entirely new and unchartered liability exposure which has historically been shielded by the plain language of the Longshore Act and the jurisprudence properly interpreting that body of law.

This Court Should Preserve the Integrity of LHWCA:

This Honorable Court should exercise its powers under Rule 10(c) of the Rules of the Supreme Court of the United States to preserve the exclusive remedy provisions expressly enacted by Congress, but which have been ignored by the Louisiana Fourth Circuit Court of Appeal. That court's ruling has raised an important issue of federal law which has not previously been addressed by this or any other Court. The Louisiana appellate court's ruling is inconsistent with the express language of the Longshore Act and is in derogation of longshore employers' statutory rights.

This Court Has Jurisdiction To Consider the Judgment Below:

The United States Congress has dictated the circumstances under which this Court may review the decision of a state court which impinges upon a statute of the United States. The United States Code, at 28 U.S.C. § 1257, reads in pertinent part:

§ 1257. State Courts; *Certiorari*

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by *Writ Of Certiorari* where the validity of a treaty or statute of the United States is drawn in question, or where the validity of a statute of any state is drawn

> in question on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is especially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Pursuant to this statute, this Court has consistently held that in order to be reviewable, a state court judgment must be final in two senses. First, it must be subject to no further review or correction in any other state tribunal. Secondly, it must constitute the effective determination of the litigation, not of merely interlocutory or intermediate steps therein. *Jefferson v. Alabama,* 522 U.S. 75, 118 S.Ct. 481, 139 L.Ed.2d 433 (1997).

The judgment that TTO is asking this Court to review is admittedly interlocutory. However, it fits squarely within well-established exceptions to 28 U.S.C.A. §1257 created by this Court, allowing review of state court decisions where matters are still pending below. This Court has recognized circumstances under which it will consider a state court decision final for purposes of exercising its jurisdiction where the highest court of a state has finally determined a federal issue, even though proceedings were ongoing at the state level, including a pending trial.

In Cox *Broadcasting Corporation v. Cohn,* 420 U.S. 469, 95 S. Ct. 1029, 43 L.Ed.2d 328 (1975), this Court articulated four (4) categories of cases in which the decision of a state court is considered final for purposes of §1257. In Cox,

the Court held that it had jurisdiction of the appeal of a state court decision regarding civil liability and sanctions imposed for alleged First and Fourteenth Amendment activities. *Id.* The case arose when the father of a deceased rape victim brought an action against the broadcasting company for invasion of the father's right to privacy, occasioned by the broadcasting company publishing the name of the rape victim. *Id.* The trial court granted summary judgment in favor of the father, but the Georgia Supreme Court reversed and remanded the case back to the trial court for further proceedings. *Id.*

In determining that it had jurisdiction over the matter, the Cox court stated that "in most, if not all, the cases in these categories, these additional proceedings would not require the decision of other federal questions that might also require review by the Court at a later date, and immediate rather than delayed review would be the best way to avoid 'the mischief of economic waste and of delayed justice.'" *Id.* at 476, 1036, citing *Radio Station WOW, Inc. v. Johnson,* 326 U.S. 120,124, 65 S.Ct. 1475, 1478, 89 L.Ed. 2092 (1945).

The present case falls squarely in line with the policy considerations articulated by this Court in Cox. This case does not contain any other federal questions for review by this Court at a later date, and immediate review would be the most effective way of avoiding enormous economic waste and delayed justice, by requiring this case to proceed to trial. Immediate review should foster efficiency both in this case and the cases that will be spawned by the judicial activism it represents.

The first category of cases articulated in *Cox* contemplates cases in which further proceedings are scheduled in the state court, but the already decided federal issue is conclusive where it causes the outcome of further proceedings to be pre-determined for all practical purposes. In this category, the judgment of the state court on the federal issue is often considered final because the case has essentially been determined by that decision.

The second category involves a federal issue which has been finally decided by the state's highest court, and which remains at issue regardless of the outcome of the pending state court proceedings.

The third category identified by the *Cox* Court anticipates "no situations where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case. *Id.* at 480, 1038.

The final category identified in Cox embodies those cases where the party seeking review of the state court decision might prevail on the merits in the pending state court proceedings on non-federal grounds. Such an occurrence would obviously preclude review of the federal issue by this Court. Importantly, this category also requires that reversal of the state court decision on the federal issue would cease any further litigation. *Id.* at 482, 1040.

The facts of this case mirror the second and fourth

categories recognized by the *Cox* Court and compel this Court to consider the important federal question presented here. Immediate, rather than delayed review is the only way to preclude the economic waste and delayed justice that would be caused by allowing the decision below to stand.

The fourth category discussed in *Cox*, and the one most applicable to the present case, involved the situation where the party seeking review had a possibility of prevailing on the merits on non-federal grounds, obviating the necessity of review of the federal issue by the Supreme Court, and where reversal of the state court decision on the federal issue would preclude any further litigation on the relevant cause of action. This Court made a point of mentioning the driving policy behind this exception to the finality rule, when it stated:

> "A refusal immediately to review the state court decision might seriously erode federal policy, the court has entertained and decided the federal issue, which itself has been finally determined by the state courts for the purpose of the state litigation.

Cox, at 420 U.S. 469, 482, 95 S.Ct. 1029, 1040. The same situation exists here, where the Louisiana Supreme Court refused to review the erroneous ruling of the Louisiana Fourth Circuit.

This Court considered an analogous fact situation in *Mercantile National Bank v. Langdeau,* 371 U.S. 555, 83 S.Ct. 520, 9 L.Ed.2d, 523 (1963). In *Langdeau,* suit was

brought against two national banks in Travis County, Texas. The banks relied on a federal venue statute which precluded suit being brought against them in Travis County. They argued that suit would properly be brought against them in a different county. While acknowledging that the banks might be able to prevail on the merits of the case in the pending state court proceedings, this Court exercised its jurisdiction because it considered the venue "issue as a separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising the plaintiff's cause of action." *Langdeau* at 558, 83 S.Ct. at 522. The Court logically reasoned that it would be counterproductive to allow lengthy and complex litigation to unfold in the courts of Travis County to only later vacate any decision because venue was improper. Instead, the Court chose to consider the venue question which might preclude further litigation in Travis County before the state court proceedings proceeded.

Here, all of the requisite elements articulated by the *Cox* Court are met. Any argument to this Court that the case should not be considered final for purposes of §1257 until after all of the proceedings in the state court are concluded should fail under the reasoning espoused by this Court in *Langdeau.* Primarily, a failure to immediately resolve the federal issue decided by a Louisiana state court would seriously erode the federal policy embodied in the Longshore Act. Secondly, because the plain language and intent of Congress enunciated in the Longshore Act has been eviscerated with tacit approval by the Louisiana Supreme Court, the federal issued presented in this case is, for all purposes, final.

Additionally, reversal of the state court's decision of the federal issue in this matter would absolutely preclude any further litigation against TTO. Any attempt by respondent to delay this Court's review of this issue of first impression would cause undue confusion throughout the state and federal courts trying to apply the LHWCA nationally. More importantly to TTO, a failure by this Court to immediately exercise its jurisdiction would subject TTO to lengthy, complex and expensive litigation which may be entirely unnecessary if this Court decides that the Louisiana appellate courts are subverting the clear language and intent of the Longshore Act. This Court should exercise its jurisdiction and correct the ruling of the Louisiana appellate courts, which contradict the congressional intent underlying the Longshore Act.

TTO Enjoys Tort Immunity under the Longshore Act:

By rendering its decision, the Louisiana Fourth Circuit Court of Appeal enacted an intentional tort exception to an employer's tort immunity under the Longshore Act, engaging in the worst form of judicial activism in contravention of Congressional intent. As a longshoreman employed by TTO, Taylor does not contest that his claim is governed by the Longshore Act. 33 U.S.C. § 902 (3); 33 U.S.C. § 903.

Under the Act, employers such as TTO are legally required to provide compensation and medical benefits to their employees, such as Taylor, who become injured or ill during the course and scope of employment. The Longshore Act also provides that the liability of a covered employer to

provide the specified compensation and medical benefits to its injured or ill workers **shall be exclusive and in place of all other liability** of such employer to the employee. 33 U.S.C. § 905(a) *(emphasis added).*[2] The exclusivity provisions of the LHWCA are to be read broadly so as to protect employers from liability under state laws or other causes of action. *Texas Employers' Ins. Assoc. v. Jackson,* 820 F. 2d 1406, 1414 (5th Cir. 1987), *rev'd on other grounds,* 862 F. 2d 491 (5th Cir. 1988), *cert. denied,* 490 U.S. 1035, 109 S. Ct. 1932 (1989), *citing LeSassier v. Chevron USA, Inc.,* 776 F. 2d 506 (5th Cir. 1985).

Under the carefully worded language of the Longshore Act, workers enjoy the protection of guaranteed entitlement to compensation benefits if injured or ill as a result of their own fault[3] and even if the employer is free from fault. But in exchange for this vested remedy, longshore employees are restricted from pursuing alternative legal actions against an employer. The limitations on the longshore employee's remedies against his employer are set forth at Section 933(i) of the Longshore Act, which states:

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[2] TTO acknowledges that the LHWCA allows a longshoreman to sue his employer for damages for injury or death resulting from *vessel negligence.* 33 U.S.C. § 905(b). There is no dispute that Taylor's claim does **not** arise out of vessel negligence.

[3] The LHWCA includes an express prohibition of an employee's entitlement to benefits in situations where an injury (or death) results from the employee's intoxication or the employee's intention to injure or kill himself or another. 33 U.S.C. § 903(c).

> The right to compensation or benefits under this Charter **shall be the exclusive remedy to an employee when he is injured ... by the negligence or wrong of any other person in the same employ:** Provided, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

33 U.S.C. § 933(i) *(emphasis added)*. Notably, the term "wrong" in 33 U.S.C. 933(i) has been specifically interpreted to encompass intentional or willful torts. *Sharp v. Elkins,* 616 F. Supp. 1561, 1564 (W.D. La. 1985). Therefore, Taylor's sole remedy against TTO for his alleged injury, resulting from the intentional, criminal tort committed by his co-worker, would be his entitlement to compensation and medical benefits under the Act. Taylor has received compensation and medical benefits from TTO in connection with this incident and is limited to those benefits.

LHWCA Does Not Provide For Intentional Tort Exception to Employer's Tort Immunity:

Courts have long recognized that the **exclusive** remedy for an employee against his employer is workers' compensation benefits under the LHWCA because **the Longshore Act bars all common law tort actions against the employer.** *Howlett v. Birkdale Shipping* Co., *S.A.*, 512 U.S. 92, 114 S. Ct. 2057, 2062 (1994); *Thomas v. Newton Intern. Enterprises,* 42 F. 3d 1266, 1267 (9th Cir. 1994); *Robin v. Sun Oil Co.,* 548 F. 2d 554, 556 (5th Cir. 1977); *Hall v. Equitable Shipyard, Inc.,* 670 So. 2d 543, 545 (La. App. 4th Cir. 1996); *Webb v. Shell Offshore, Inc.,* 557 So. 2d

276, 277 (La. App. 4th Cir. 1990) *(emphasis added).* In contrast, employers who are governed by state workers' compensation laws are often not afforded such broad protections from tort liability. For example, under La. Rev.Stat. § 23:1032, relied upon by the Louisiana Fourth Circuit in its opinion below, an employer can be held liable for an intentional tort under Louisiana law. The LHWCA has no such statutory exception to an employer's immunity from tort liability, and the Fourth Circuit's consideration of the judicially recognized principles derived from Louisiana's state workers' compensation laws was wholly misplaced. Ironically, the Louisiana Fourth Circuit Court of Appeal recognized that the LHWCA does not include an intentional tort exception. *Taylor,* 785 So. 2d at 862.(A-5,7) Nonetheless, that court dismissed the absence of such an exception as a "complicating factor" and judicially created an exception with the Louisiana workers' compensation statute as a guide.(A-5,10) The end result was that Louisiana's Fourth Circuit Court of Appeal did what the United States Congress opted not to do in enacting the LHWCA: it added an intentional tort exception to the employer's tort immunity.

By vacating and remanding this case, the Louisiana Fourth Circuit Court of Appeal has also done what no other court has done in the seventy-four year history of the LHWCA — allow a longshoreman injured by the intentional criminal act of a co-worker to sue his employer in tort for his injuries. This Court must not allow this judicial expansionism and allow Louisiana to be the only jurisdiction in the nation to allow such a claim to proceed. The Longshore Act, which governs the rights and remedies of Taylor and

TTO, does not provide any exceptions which would allow Taylor to recover tort damages in this case. TTO calls upon this Court to restore the rights and protections afforded to both employees and their employers as enacted by Congress. No sound reason or authority exists to sanction the judicially created remedy embraced by the Louisiana intermediate appellate court and allowed to stand by the Louisiana Supreme Court.

No Authority for Abrogating Tort Immunity Under the Longshore Act:

Neither the Fourth Circuit nor Taylor has cited any case in which a court has held that an intentional tort exception can be applied to defeat the Congressionally mandated immunity afforded employers under the LHWCA. Taylor's argument below and the Louisiana Fourth Circuit's holding are based solely on a handful of opinions from a few federal district and Louisiana appellate courts which contain mere **dicta** suggestive of a potential exception to an employer's tort immunity in the situation of an intentional tort committed **by the employer** against the employee. However, a careful reading of those cases reveals that there has never before been an intentional tort exception applied to the employer's tort immunity under the Longshore Act. A plain reading of the cases relied on by Taylor below and cited in the Fourth Circuit's opinion shows that the comments regarding the supposed intentional tort exception were made only in discussion of workers' compensation liabilities in general.

By tracing the isolated remarks in each of those cases to their original source, it is revealed that the proposi-

tion that "there is an intentional tort exception to employer immunity" originated in a workers' compensation treatise, which did not even pertain specifically to the Longshore Act! All of the authorities which purportedly support Taylor's argument and the Fourth Circuit's holding cite to Larson, Workmen's Compensation Law, or to cases which in turn cite to Larson. Not a single case relied upon by the Fourth Circuit involved or applied an intentional tort exception to a longshore employer's tort immunity. The comments in those cases addressing an intentional tort exception had their origin in a text book discussion of generic workers' compensation law principles. While Larson's work is certainly a respected treatise, it does not focus on the Longshore Act in its consideration of exclusive remedy issues, but on more liberal state workers' compensation statutes.

The distinction between the LHWCA and those state workers' compensation acts that allow tort actions for intentional torts is significant and reflects markedly different remedies under the varying bodies of workers' compensation law. The cases cited by Taylor and the Fourth Circuit recognized this distinction and consequently upheld the clear language of the LHWCA to ensure employer tort immunity in situations where an intentional tort by a longshore employer had been alleged.

For example, in *Houston v. Bechtel Assoc. Professional Corp.*, 522 F. Supp. 1094 (D.D.C. 1981), the plaintiff was an LHWCA covered employee. He filed a tort action against his employer alleging willful, wanton, reckless and unlawful misconduct in exposing him to unreason-

ably high levels of silica dust. He sought, in addition to his compensation remedy, general tort and punitive damages. The court dismissed the plaintiff's tort claims and his claim for punitive damages. In doing so, the district court recognized that the LHWCA precluded the plaintiff from maintaining a tort action against his employer, including a tort action based on willful[4] misconduct. The court went on to comment as follows:

> The overwhelming weight of authority is that "the common law of liability of the employer cannot be stretched to include accidental injuries caused by the gross, wanton, willful, deliberate, **intentional,** reckless, culpable or malicious negligence, breach of statute or other misconduct short of genuine intentional injury."

Houston, 522 F. Supp at. 1096, quoting 2A Larson, Workmen's Compensation Law, § 68.13 at 13-5. *(emphasis added)*

The *Houston* court also explained that the plaintiff's reliance on West Virginia's Worker's Compensation Act was misplaced, because that state act expressly allows tort actions against an employer when a worker is injured as a result of the employer's "deliberate intention." *Houston, 522* F. Supp. at 1097. The court expressly noted that the LHWCA contains no such exemption from its exclusivity provisions. *Id.* The *Houston* court's comments concerning a

---

[4] The term "willful" is synonymous with "intentional." See definitions of intentional tort and willful, Black's Law Dictionary, (7th Ed.) pp. 1497, 1593.

possible intentional tort exception to an employer's tort immunity was addressed in the context of workers' compensation laws in general, and the West Virginia Compensation Act in particular, and not the Longshore and Harbor Workers' Compensation Act. There is no intentional tort exception to an employer's tort immunity under the Longshore Act.

Similarly, the case *of Austin v. Johns-Manville Sales Corp.*, 508 F. Supp. 313 (D. Me. 1981) involved a suit that was dismissed due to the tort immunity provisions of the LHWCA. That case also included the same quote from Larson's workers' compensation treatise commenting on exceptions to wworkers' compensation laws in general, but not the LHWCA. *Austin*, 508 F. Supp. at 316. *Austin* does not hold that longshore employers can be held liable for intentional torts. Yet, the Louisiana Fourth Circuit and Taylor have latched on to the recurring quote that originated in Larson's workers' compensation treatise, rather than the holdings and rationale of the cited cases, to reach the erroneous conclusion that there is an intentional tort exception under the Longshore Act. But importantly, **none** of those authorities held that such an exception exists under the Longshore Act.

The state court cases cited by Taylor and the Fourth Circuit likewise fail to hold that a worker covered by the Longshore Act can sue his employer in tort. *Malbrough v. Halliburton Logging Services, Inc.*, 710 So. 2d 1149 (La. App. 1st Cir.); *writ denied*, 720 So. 2d 1217 (La. 1998), involved a longshoreman seeking tort damages for the alleged intentional act of his co-employee, in which the

court did **not** conclude that the longshore employer could be held liable for tort damages. Rather, the court held that the co-employee was not shielded from tort liability under the Longshore Act for his alleged intentional tort.[5] *Malbrough* does **not** hold that a longshore employer is liable for the intentional tort of one employee against another.

The *Malbrough* case actually supports the district court's ruling below that Taylor has no cause of action against TTO for the alleged intentional tort committed by Taylor's co-employee. In discussing the remedies available to a longshoreman, the *Malbrough* court noted:

> There is a distinction in terms of coverage of the LHWCA depending on whether the employer or the employee committed the intentional tort. 33 U.S.C. § 902(2) defines "injury"to include any injury caused by the "willful act of a third person." Since the employer could not qualify as a "third person," an intentional tort committed by the employer would fall outside the scope of the LHWCA coverage. **However, if the employee is considered as a "third person," an intentional tort could fall under the scope of the LHWCA, thereby triggering the employer's immunity from suit under § 905(a).** We do not believe, however, that the fact the injury may be covered from the employer's perspective precludes an employee from suing his fellow employee for an intentional tort.

[5] Although the plaintiff sought to recover damages from his employer also, his tort claims were voluntarily dismissed when the employer asserted the exclusivity provisions of the LHWCA. The plaintiff received benefits under the Longshore Act and not the tort damages he originally claimed.

Malbrough, 710 So. 2d at 1153, n. 2 *(emphasis added)*. Courts have considered co-employees to be "third persons" in the context of the Longshore Act, and therefore can be held liable for intentional injuries they inflict on their fellow employees while the employer would be obligated to provide LHWCA benefits only. *See Sharp*, 616 F. Supp. at 1565-66. Although not directly at issue, the *Sharp* court indicated that an injury caused by the intentional tort of a fellow worker would trigger an employer's obligation to provide compensation benefits under the Longshore Act, rather than tort liability. *Sharp*, 616 F. Supp. at 1566.

The case of *Gauthe v. Asbestos Corp. Ltd.*, 708 So. 2d 761 (La. App. 5th Cir. 1998), *writ denied*, 749 So. 2d 666 (La. 1999) affirmed the **dismissal** of the plaintiffs' intentional tort wrongful death action. The court did not recognize an intentional tort exception under the Longshore Act, but merely commented that the district court was of the opinion that the plaintiffs would have an intentional tort cause of action under the Louisiana Workers' Compensation Act or the LHWCA. *Gauthe*, 708 So. 2d at 762. However, there was no cited authority for the district court's belief regarding the possibility of intentional tort cause of action under the LHWCA.

Clearly, the Louisiana Fourth Circuit was in error in concluding that the *dicta* in the cited cases established an exception to a longshore employer's tort immunity. There is no authority which allows a longshore worker to circumvent his employer's statutorily mandated tort immunity in order to pursue a tort remedy against the employer.

Proposed Intentional Tort Exception is Contrary to Express Provisions of the Longshore Act:

In rendering its decision, the Fourth Circuit commented that "[a]lthough the LHWCA does not have a specific provision expressly creating an employer intentional tort exception for its exclusive remedy provision, the case law carving out that exception is not inconsistent with the LHWCA." *See Taylor,* 785 So. 2d at 863.(A-7) The Louisiana appellate court's impression is simply wrong and violates the federal law enacted by Congress.

An intentional tort exception would be plainly contradictory to Section 905 (a) of the Longshore Act, which provides that the liability of an employer governed by the Act **"shall be exclusive and in place of all other liability of such employer to the employee...."** 33 U.S.C. § 905 (a)*(emphasis added).* The exception would also be contrary to Section 933 which states:

> The right to compensation or benefits under this Act **shall be the exclusive remedy to an employee** when he is injured ... by the negligence or wrong of any other person in the same employ...
>
> 33 U.S.C. § 933(i) *(emphasis added).*[6]

Congress defined the parameters of an employer's liability and an employee's remedies in express and unequivocal language. As stated *in Levene v. Pintail Enter., Inc.,* 943 F. 2d 528, 531 (5th Cir. 1991), the LHWCA

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[6] As explained, supra, the term "wrong" in 33 U.S.C. § 933 (i) includes intentional and willful torts. *Sharp v. Elkins,* 661 F. Supp. 1561, 1564 (W.D. La. 1985).

"absolutely bars suit for all other acts taken in the capacity as the employer of the injured worker." The Congressional policy underlying the LHWCA would be totally abandoned if an injured worker were allowed to sue the employer in tort for damages in addition to the statutory benefits provided for under the Act. *Hetzel v. Bethlehm Steel Corp.*, 50 F. 3d 360, 366 (5th Cir. 1995). The exclusivity of the employer's liability as defined within the framework of the LHWCA leaves no room for a more expansive judicially created liability. Similarly, the employee's rights and remedies are statutorily recognized and limited.

The Longshore Act, which strikes a careful balance between the protections afforded employers and the rights enjoyed by employees, irrespective of fault, would be wholly abrogated if parties were allowed to go beyond the statutory framework and assert causes of action (or defenses) developed by the common law. The plain language of the LHWCA makes clear that Congress did not intend to give either the employer or the employee rights or remedies greater than those set forth in the Act.

Remedies Under Longshore Act Encompass Injuries Resulting From Intentional Acts by Co- Employees.

In its discussion of the *Sharp* case, which addressed a potential gap in coverage under the Act in cases involving an intentional tort by an employer, the Fourth Circuit mistakenly applied a strained interpretation of the term "injury" so as not to include within the meaning of that term an injury caused by an intentional act of another. *Taylor,* 785 So. 2d at 863.(A-7,8) However, the full definition of "injury", as

expressly set forth in the Longshore Act, includes "an injury caused by the **willful**[7] **act** of a third person directed against an employee because of his employment." 33 U.S.C. § 902(2) *(emphasis added).* Importantly, the term "third person" has been found to apply to a **fellow employee** under Section 902(2) of the LHWCA. *Sharp v. Elkins,* 616 F. Supp. 1561, 1565-66 (W.D. La. 1985). Hence, the Act's remedies and protections are triggered even when one is purposely injured by another, **including a co-employee,** if the attack was employment-related, the exact scenario alleged here by Taylor.

Contrary to the conclusion reached by the appellate court below, *Sharp* does not stand for the proposition that a longshoreman can sue his employer in tort for an alleged intentional tort. *Sharp* recognizes that an employee's entitlement to LHWCA benefits and the employer's immunity from tort liability arise in those situations where a worker is purposely or intentionally injured by a coworker. The worker's injury does not have to result from the merely accidental or negligent act of another in order for him to receive statutory benefits. It would be patently unfair to deprive an employee or the employer of their statutory protections merely because the worker was intentionally harmed by another in connection with his employment.

The court in *Penker Const. Co. v. Cardillo,* 118 F. 2d 14 (D. C. Cir. 1941) also recognized that a work-related assault against an employee by a co-worker makes the employee's injury compensable under the LHWCA rather than creating tort liability for the employer. The *Penker* court held:

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[7] As pointed out at footnote 4, the term "willfull" is synonymous with "intentional."

> An assault by a stranger, and *a fortiori* by a fellow employee, clearly arises out of the employment where, as here, the employment provides the motive for the assault....
>
> The finding that "the employment ... was responsible for the assault" is equivalent to a finding that the injury was "caused by the willful act of a third person directed against an employee because of his employment." The [Longshore Act] makes such an injury compensable.

Penker, 118 F. 2d at 15 *(internal citations and footnotes omitted).* Also, in the case of *Southern Pac. Co. v. Sheppard,* 112 F. 2d 147 (5th Cir. 1940), the U.S. Fifth Circuit Court of Appeals held that a claim arising out of an employee's death as a result of a work-related fight was governed by the LHWCA. Consequently, the employer was liable for statutory benefits, not tort damages.

CONCLUSION

The United States Congress has spoken on the issue of a longshore employer's obligations and liabilities, and the LHWCA and the jurisprudence interpreting it provide that in exchange for an employer's obligation to provide statutory compensation and medical benefits to its injured workers, it is immune from tort liability - - even if an employee is injured intentionally at the hands of a fellow-worker. The ruling of the Louisiana Fourth Circuit Court of Appeal, allowed to stand by the Louisiana Supreme Court, has the effect of judicially enacting new law. As a longshoreman, Taylor's remedies can be found only within the Longshore Act. There exists no legal authority that would give Taylor a more expansive remedy in this case. The Louisiana Fourth Circuit Court of Appeal clearly erred in creating such an expanded remedy. The Fourth Circuit's application of dicta to create an exception to a longshore employer's tort immunity when no court has done so before must not be allowed to stand. It is judicial activism at its worst.

TTO respectfully urges this Court to uphold the intent of Congress and binding judicial authorities, which recognize the well settled rule that an employer is entitled to tort immunity under the Longshore Act, and overrule and reverse the March 14, 2001 decision of the Louisiana Fourth Circuit Court of Appeal, allowed to stand by the Louisiana Supreme Court.

Respectfully submitted,

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APPENDIX A

The Supreme Court of the State of Louisiana

FRANK TAYLOR, JR.

VS. NO. 2001-C-1057

TRANSOCEAN TERMINAL OPERATORS, INC.

- - - - - -

IN RE: Transocean Terminal Operators Inc.; - Defendant; Applying for Writ of Certiorari and/or Review, Parish of Orleans, Civil District Court Div. E, Nos. 99-6043; to the Court of Appeal, Fourth Circuit, No. 2000-CA-0604

- - - - - -

June 15, 2001

Denied.

PCC
PFC
CDK
JTK
RLL

VICTORY, J., would grant the writ.
TRAYLOR, J., would grant the writ.

Supreme Court of Louisiana
June 15, 2001
/s/ Katherine A. Fontana

Deputy Clerk of Court
For the Court

APPENDIX B

FRANK TAYLOR, JR.	*	No. 2000-CA-0604
VERSUS	*	COURT OF APPEAL
TRANSOCEAN TERMINAL OPERATORS., INC.	*	FOURTH CIRCUIT
NO. 2000-CA-0604	*	STATE OF LOUISIANA

* * * * * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-6043, DIVISION "E-9"
Honorable Gerald P. Fedoroff, Judge

JOAN BERNARD ARMSTRONG

JUDGE

* * * * * *

(Court composed of Judge Joan Bernard Armstrong,
Judge Charles R. Jones and
Judge Terri F. Love)

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MAR 14 2001

VACATED AND REMANDED.

This is a personal injury case. The plaintiff, who is a longshoreman, was stabbed while at work, by a fellow employee. The plaintiff alleges that the stabbing was work-related, i.e. within the course and scope of his and the fellow-employee's employment, and that, therefore, his employer is vicariously liable. The defendant employer argues that, under the "exclusive remedy" provision of the Longshoreman and Harbor Worker's Compensation Act ("LHWCA"), 33 U.S.C. § 901 et. seq., its only liability is for compensation benefits and the plaintiff cannot sue the defendant employer in tort. The plaintiff responds that, because he is alleging an intentional tort', the exclusive remedy provision of the LHWCA is not applicable.

The defendant employer filed a peremptory exception of no cause of action. The trial court, evidently agreeing with the defendant employer's position as to the

applicability of the exclusive remedy provision of the LHWCA, maintained the exception of no cause of action and dismissed the plaintiffs suit. The plaintiff then brought the present appeal. Because we agree with the considerable body of case law which states that the exclusive remedy provision of the LHWCA is not applicable to an intentional tort by (or attributable to) an employer, and in light of the apparent absence of any case law to the contrary we will vacate the judgment of the trial court and remand for further proceedings. Of course, we express no opinion as to the ultimate merits of the plaintiff's underlying case. We hold only that the plaintiff has stated a cause of action. In order to prevail, the plaintiff will still have to prove that the defendant employer is vicariously liable for the intentional tort of Bobby Young.

Plaintiff Frank Taylor was a Longshoreman. He was employed by defendant Transocean Terminal Operators, Inc. ("Transocean"). Mr. Taylor alleges that, while at work, he was stabbed by Bobby Young, who was another of Transocean's employees. Mr. Taylor also alleges that the stabbing occurred within the course and scope of his employment and Bobby Young's employment, as a result of an employment-related altercation, so that the defendant is vicariously liable for the stabbing.

The issue presented on appeal is a purely legal one: In the case of an intentional tort by (or attributable to) the employer, is the "exclusive remedy" provision of the LHWCA, 11 U.S.C. §905, applicable so that the employee may recover only compensation benefits and is barred from

bringing a tort action against the employer?[1]

The notion that a claim for an intentional tort committed by an employer is an exception to a statutory exclusive remedy compensation scheme is familiar in the context of Louisiana's worker's compensation law. Louisiana's worker's compensation statute provides that it does not affect the liability of the employer for civil liability resulting from an intentional act. La. R.S. 23:1032.B. Thus, it has been held that an intentional tort by an employer is not subject to the "exclusive remedy" provision of Louisiana's worker's compensation law and may give rise to a tort action by the employee against the employer. See, e.g., Bazley v. Tortorich, 397 So.2d 475 (La. 1981). This is typical of state worker's compensation laws. Bazley, 397 So-2d at 480 (citing 2A Larson, The Law of Workmen's Compensation §§68-69 (1976).

The complicating factor with respect to the LHWCA is that the LHWCA does not have a specific provision expressly stating that an employer's intentional tort is an exception to the statute's "exclusive remedy" provision. Nevertheless, over the last twenty years, a number of court decisions, from Louisiana and from other jurisdictions, have stated that an employer's intentional tort is an exception to the exclusive remedy provision of the LHWCA and that, in such cases, the employee may bring a tort action against the

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[1] There is also a readily apparent issue of whether the stabbing by fellow employee Bobby Young may be attributed, under a theory of vicarious liability, to the defendant employer. For reasons we explain later in this opinion, we do not decide the vicarious liability issue in this appeal; we leave it to be addressed by the trial court on remand.

employer, The decisions so stating included recent ones from Louisiana's First and Fifth Circuit Courts of Appeal. See Marlbrough v. Halliburton Logging Services, Inc., 97-0378 (La. App. 1 Cir. 4/8/98), 710 So.2d 1149, 1152; Gauthe v. Asbestos Corp., 97-941 (La. App. 5 Cir. 1/27/98), 708 So.2d 761. Other decisions so stating include ones from the federal district courts for the Eastern and Western Districts of Louisiana. See Johnson v. ODECO Oil & Gas Co., 679 F. Supp. 604, 606-607 (E.D. La. 1987); Sharp v. Elkins, 616 F. Supp. 1561, 1565 (W.D. La. 1985).

The position that an intentional tort presents an exception to the exclusive remedy provision of the LHWCA is not new. Two cases so stated at least twenty years ago. See Austin v. Johns-Manville Sales Corp., 508 F. Supp. 313, 316 (D. Me. 1981); Houston v. Bechtel Associates, 522 F. Supp. 1094, 1096 (D. D. C. 1981). See also Espadron v. Baker-Hughes. Inc., 97-1951 (La. App. 4 Cir. 4/22/98) 714 So. 2d 60, 62 (plaintiff, while entitled to LHWCA compensation benefits "may not bring a claim against [his employer] for non-intentional tort. 33 U.S.C. §905". In contrast to this line of case law, we have been cited no cases holding that the LHWCA's exclusive remedy provision applies to an employer's intentional tort.

Transocean's response to all of the cases on point is to argue that the statements of those cases, that an employer's intentional tort constitutes an exception to the LHWCA's exclusive remedy provision, are all "dicta". Transocean bases its argument upon the fact that, in each of the cases in which the issue of employer tort liability for intentional tort was squarely presented, the court ultimately

determined that the conduct sued upon did not constitute an intentional tort but, instead, constituted negligence or some level of culpability less than an intentional tort. However, a review of those decisions compels the conclusion that the pronouncements in those cases are not mere "dicta". The courts' opinions make clear that each adopted the position that an intentional tort constitutes an exception to the LHWCA's exclusive remedy provision prior to turning to the issue of whether there was, in fact, an intentional tort present in the cases before them. If they had considered the LHWCA's exclusive remedy provisions to be applicable even to cases of employer intentional torts, then they would not have had any need to go on to decide whether there was, in fact, an intentional tort. The fact that, in each case, the courts found that there was no intentional tort simply reflects how strictly they applied the exception for intentional torts. See, e.g., Austin, 508 F. Supp. at 316 ("Nothing short of a specific intent to injure the employee falls outside of the scope of the [LHWCA]".); Johnson, 679 F. Supp. at 606-607 (willful and wanton misconduct not sufficient to make exception applicable). in any event, even if we were to accept the characterization of these decisions as "dicta", it would certainly be a substantial and uniform body of dicta including decisions both local and national, both state and federal, both recent and long-established and, perhaps most strikingly, apparently uncontradicted by any other case law.

Although the LHWCA does not have a specific provision expressly creating an employer intentional tort exception for its exclusive remedy provision, the case law carving out that exception is not inconsistent with LHWCA. As explained in the Sharp decision, 616 F, Supp. at 1565-66,

the LHWCA covers, and thus provides compensation benefits for, "injuries" caused by accidents, by occupational disease and by the willful acts of third persons. 33 U.S.C § 902 (2) (definition of injury").

> Accordingly, if an employer commits a willful act against its employee, then the injury to the employee apparently has not been caused by a "third person", is not accidental and, thus, not compensable under the [LHWCA]. Under this rationale, an intentional tort exception, such as the one found in Houston and Austin, supra, is appropriate, otherwise an injured employee would be left without a remedy because of the exclusivity provision of § 905 (a) and no workmen's compensation remedy because the injury would not come under any existing definition.

Sharp, 616 F. Supp. at 1566. In other words, because the LHWCA provides benefits only for injuries caused by (1) accidents, (2) occupational disease and (3) willful acts of third persons (and "third persons" does not include employers), and an intentional tort by an employer fits none of those three categories, the LHWCA does not provide any benefits for injuries caused by an intentional tort by an employer. Because the LHWCA's benefit provisions do not apply to employer intentional torts either. As the Sharp court suggests, because the LHWCA does not provide benefits for injuries caused by an employer intentional tort, application of the LHWCA's exclusive remedy provision to bar an employee tort action in the case of an employer intentional tort would result in the employee having no remedy at all in

the case of an employer intentional tort, in either tort or compensation under the LHWCA–a result that we cannot believe that Congress would have so intended in enacting the LHWCA.

As we have noted above, it is typical of the worker's compensation schemes of various jurisdictions that, in the case of an employer intentional tort, the employee is not limited to compensation benefits but, instead, has a right to sue in tort. There is an "almost universal practice of differentiating between intentional and unintentional harms, prevalent in most workers' compensation programs". Bazley, 397 So.2d at 481. See also ZA Larson. The Law of Workmen's Compensation §§ 68-69 (1976).

The LHWCA is, apart from its special federal maritime law nature, "a typical worker's compensation system". Northeast Marine Terminal Co v. Caputo, 432 U.S. 249, 258 (1977). In particular, the LHWCA embodies the heart of the worker's compensation "bargain": The employee receives the certainty of a specified benefit but foregoes a tort action and the employer incurs liability for the specified benefit but avoids the risk of a tort action. See WMATA v. Johnson, 467 U.S. 925, 931-32 (1984) (discussing LHWCA). However, the worker's compensation "bargain" typically does not include an employer intentional tort. "Universally, harmful conduct is considered more reprehensible if intentional" so that "[t]here is a definite tendency to impose greater responsibility upon a defendant whose conduct has been intended to do harm or morally wrong,". Bazley, 397 So.2d at 480. Thus, the understanding of the LHWCA that we have adopted in this present appeal is, not only in concert with the

views of the various courts to have considered the matter over the last 20 years, but is in accord with the mainstream of worker's compensation law. Consequently, we believe that our understanding most likely comports with the intent of Congress in enacting the LHWCA.

Lastly, we note that there is a readily apparent issue, mentioned in the briefs, of whether the employer in this case can be held liable in tort, under a theory of vicarious liability, for the stabbing of the plaintiff by employee Bobby Young. Put another way, was the stabbing by employee Bobby Young an intentional tort of the employer? The legal standard under Louisiana law (or federal law if applicable) for holding an employer vicariously liable for a stabbing by an employee, and the facts and circumstances which must be present for such a tort to be so attributable to the employer, are not addressed in the briefs on appeal and, apparently, were not a focus of the proceedings in the trial court. Consequently, we will not address that issue in this appeal but leave it for development on remand.

For the foregoing reasons, we vacate the judgment of trial court and remand for further proceedings.

VACATED AND REMANDED.

APPENDIX C

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 99-6043 DIVISION " E " SECTION 9

FRANK TAYLOR, JR.

VERSUS

TRANSOCEAN TERMINAL OPERATORS, INC.

FILED:_____ _____
DEPUTY CLERK

JUDGMENT

This cause came before the Court for hearing on the exception of No Cause of Action filed by defendant, Transocean Terminal Operators, Inc. on the 13th day of August, 1999, and the Court considering the Exception to be well founded under the law.

IT IS ORDERED, ADJUDGED AND DECREED that the Exception of No Cause of Action be and it is hereby sustained and the plaintiffs suit dismissed Plaintiffs costs.

Judgment read, rendered and signed this 19 day of Aug., 1999 at New Orleans, Louisiana.

/s/ Gerald P. Fedoroff
JUDGE

Amber Darby
Deputy Clerk